

**IN THE COURT APPEAL OF TONGA
NUKU'ALOFA REGISTRY**

APPEAL NO.3/2000

BETWEEN : *MAXAM GOLD BANK LTD* - **Appellant;**

AND : *LIDLAW HOLDINGS LTD* - **Respondent.**

BEFORE THE HON. CHIEF JUSTICE WARD

Counsel: Mr Niu for appellant
 Mr Garrett for respondent

Date of Ruling: 12 May 2000.

Ruling

Following my rulings of 1st May in the original application and 3rd May in the application for a stay pending appeal, counsel for the parties have written to the court asking for resolution of a problem that has arisen in relation to documents apparently held in Maxam's safe deposit box in the MBf bank.

Mr Niu advises the court that the documents are deeds belonging to clients of another company, Private Client Services, with which Mr Pedras is involved. That company used the services of Maxam and the deeds were deposited with the latter in the course of that. They are not the property of Maxam but, it is suggested, are simply in its possession for safe custody.

He objects to Laidlaw's nominee as company secretary seeing them because they belong to the owners of the deeds. They are clients of Private Client Services and not of Maxam and allowing him to see them would breach the confidentiality of the clients of Private Client Services.

Mr Garrett argues that they are part of the property of Maxam and they should, in accordance with the change in control of the company, be accessible to him. His client has the right to see the assets and property of Maxam. The safe deposit box is in the name of Maxam and, prima facie, is part of the property of Maxam. Until he knows the exact nature of its contents, he is unable to know whether or not the assertions of the other party are correct.

Both parties have sought a ruling from the court as to the way in which these documents should be treated whilst the appeal is pending. They are content it should be decided on the basis of letters exchanged between counsel dated 8 May 2000 from Garrett to Niu and 9 May 2000 from Niu to Garrett.

In general terms, I accept that, should the appeal succeed, the consequences of a prior revelation of the identity of clients of Private Client Services may be irreparable. On the other hand, as the documents are in Maxam's deposit box, they were presumably available to that company during its operation. I have ordered that both claimants to the position of company secretary of Maxam shall be present when any company documents or records are examined.

I consider the sensible and safe order would be for the deposit box to be opened and the contents checked in the presence of the two suggested company secretaries but in a manner that ensures neither can read the documents. This will have to be done by a totally independent person. I appreciate that in a community such as this, many apparently independent or neutral figures may, in reality, be linked now or ⁱⁿ the future with one or other of the parties.

If the representations by Mr Niu about Private Client Services are correct, that company is entitled to have its confidential relationship with its clients preserved. In those circumstances, although I am hesitant to involve a court officer in the events of the case itself, I shall order the inspection be carried out by the Registrar, Supreme Court.

She is to nominate a time when she and the two claimed company secretaries shall attend at the MBf bank.

The deposit box will be opened in the presence of all three persons but in such a manner that the two purported officers of the company cannot read the contents of any document.

The Registrar is to make a list of all the contents of the deposit box with a description that, in her opinion, is sufficient to identify them subsequently. Anything that is not a document shall be noted on the list and then handed to the two other people present to examine. All documents shall be returned to the deposit box. After the other persons have examined any article that has been shown to them, they shall return it to the Registrar who shall replace it in the deposit box.

The Registrar shall then make a further copy of the list and the two claimed company secretaries shall sign the back of each copy of the list. Following that, the registrar shall place one copy of the list in the deposit box and lock it. The second copy shall be placed by her in a separate deposit box in the name of "Supreme Court, Maxam".

Neither box is then to be opened without an Order of this court and the Registrar is to instruct the Bank officers accordingly



L. Ward

NUKU'ALOFA: 12 May 2000.

CHIEF JUSTICE